

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: §
Brian Thornton § Group Art Unit: 3752
Serial No.: 09/761,940 §
Filed: January 17, 2001 § Examiner: Robin Octavia Evans
For: Lawn Chemical Application System §

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO COMMISSIONER UNDER 37 C.F.R. § 1.181

Dear Sir:

As permitted under 37 C.F.R. § 1.127, Applicant files this petition under 37 C.F.R. § 1.181 from the refusal of the primary examiner to admit an amendment.

I. Statement of Facts Involved.

At the time of mailing of a final Office action, mailed on February 11, 2004, claims 1-10 and 16-18 were pending in the application. The final Office action indicated that claims 16-18 were allowed, claims 1-6, 8, and 9 were rejected, and claims 7 and 10 were objected to. Paragraph 7 of the final Office action states "Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." A true and correct copy of the final Office action is attached hereto as Exhibit A.

In response to the final Office action, Applicant filed an Amendment After Final on June 4, 2004. In the Amendment After Final, the Applicant attempted to delete claims 1-10 and to add new independent claim 21, which corresponds with claim 7. As explained on page 3 of the Amendment After Final, "dependent claim 7 has been deleted and rewritten in independent form as new claim 21 which includes all of the limitations of the base claim and all intervening claims." A true and correct copy of the Amendment After Final is attached hereto as Exhibit B. To facilitate a comparison of proposed new claim 21 to claim 7 as it stood at the time of the final Office action, attached hereto as

Exhibit C is a true and correct copy of a page from an amendment filed on November 6, 2003, showing all relevant claims (1, 5, 6, and 7).

Proposed, new claim 21 reads as follows:

21. An apparatus, comprising:

a dispenser having a lower chamber, an upper chamber, an upstream opening, and a downstream opening, a lower portion of said upper chamber being disposed below an upper portion of said lower chamber and above a lower portion of said lower chamber, said lower portion of said lower chamber being unobstructed over substantially its entire length;

a first electrically powered valve operably connected to said upstream opening;
and

a second electrically powered valve operably connected to said downstream opening.

As shown in Exhibit C, the relevant claims, as submitted in the Amendment filed on November 6, 2003, read as follows:

1. (currently amended) An apparatus, comprising:

a dispenser having a lower chamber, an upper chamber, an upstream opening, and a downstream opening;

a first electrically powered valve operably connected to said upstream opening;
and

a second electrically powered valve operably connected to said downstream opening.

5. (original) The apparatus of claim 1 wherein a lower portion of said upper chamber is disposed below an upper portion of said lower chamber.

6. (original) The apparatus of claim 5 wherein said lower portion of said upper chamber is disposed above a lower portion of said lower chamber.

7. (original) The apparatus of claim 6 wherein said lower portion of said lower chamber is unobstructed over substantially its entire length.

In response to the Amendment After Final, an Advisory Action was issued on July 22, 2004. In Note 2, the Advisory Action refused to enter the amendments on grounds that "they raise new issues that would require further consideration and/or search." In a continuation of Note 2, the Advisory Action states "Newly presented claim has not been presented previously and would require additional consideration." A true and correct copy of the Advisory Action is attached hereto as Exhibit D.

II. Point to be Reviewed.

Whether deleting dependent claim 7 and rewriting it as proposed new claim 21, which includes all of the limitations of claim 7 and all intervening claims, raises new issues that would require further consideration and/or search.


III. Action Requested.

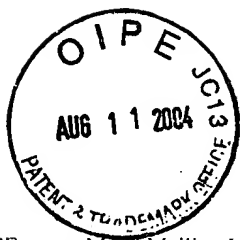
The final Office action objected to dependent claim 7 as being dependent upon a rejected base claim but indicated that claim 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicant sought to delete claim 7 and rewrite it in independent form as new claim 21, which includes all of the limitations of claim 7 and all intervening claims. The Advisory Action refused to enter the amendment on grounds that this "[n]ewly presented claim has not been presented previously and would require additional consideration." Applicant respectfully traverses this assertion. The proposed amendment merely attempts to comply with a requirement of the final Office action. After entry of the proposed amendment, the only claims that would be remaining in the application are claims that have previously been indicated as allowed or allowable.

It is therefore respectfully requested that the Commissioner grant this petition and direct that the Amendment After Final be entered and that a Notice of Allowability be issued in this application. In view of the foregoing it is requested that this petition be granted.

Date: 8-11-04

Respectfully submitted,

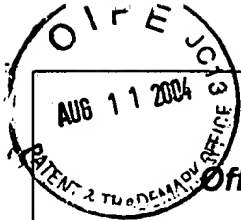

Mark Rogers
Registration No. 34,238



CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" Mailing Label Number EE 38/20991705 I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10 addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 8-11-04.

Mark Rogers
Mark Rogers
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Telephone: 501.219.2800



Office Action Summary

Application No.

09/761,940

Applicant(s)

THORNTON, BRIAN

Examiner

Robin O. Evans

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-18 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 7 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

EXHIBIT

A

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-804)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment presented in communication filed November 10, 2003 as Paper No. 14 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Knapp.

Knapp shows a dispenser having a lower chamber and an upper chamber (the chambers are separated by cover 15 as can be seen in the figure), a first electrically powered solenoid valve 17, second electrically powered solenoid valve 25, first water line 16, and second water line 22.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zuriel in view of Combs et al.

Zuriel shows a dispenser having a lower chamber 18, upper chamber 17, first valve 25 and second valve 24. Zuriel discloses that the valves are operated in a known manner per se but

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does not disclose that manner as being electrically powered solenoid valves. Combs shows another dispenser having solenoid-operated valves 31, 32, so as to provide automated operation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the valves of Zuriel solenoid valves as suggested by Combs so as to operate the valves remotely and automatically.

6. Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchan et al. in view of Davis et al. or Combs.

Buchan et al. shows a dispenser having upper chamber (designated as the portion of the container above element 15) and a lower portion designated as the portion below element 15, first valve 88, second valve 96, first water line 80 and second water line 92. Buchan et al. does not show the valves operated by solenoids. Both Combs and Davis et al. show devices having valves that can be operated electrically by solenoids (53 and 70 respectively). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the valves of Buchan et al. as solenoid valves so that the device can be operated both remotely and automatically as suggested by both Combs and Davis et al. (see column 10, lines 10-35 and column 6, lines 2-7, respectively) so as to have a device that requires little or no operator intervention.

Allowable Subject Matter

7. Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 16-18 are allowed over the prior art of record.

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Response to Arguments

9. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wittig shows a device in the general state of the art of the invention.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin O. Evans whose telephone number is (703) 305-5766. The examiner can normally be reached on Monday-Thursday, 6:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robin O. Evans
Primary Examiner
Art Unit 3752

2/9/04

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Brian Thornton

Serial No.: 09/761,940

Filed: January 17, 2001

For: Lawn Chemical Application System

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Group Art Unit: 3752

Examiner: Robin Octavia Evans

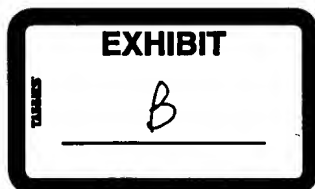
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT AFTER FINAL

Dear Sir:

In response to the Office action mailed final Office action mailed February 11, 2004, please enter the following response.

Please amend the claims as shown on the following pages:



Claims 1-15 (canceled)

16. (previously amended) A dispenser, comprising:

a tee connector having an upper opening, said tee connector forming a lower chamber;
and

a cylinder secured to said upper opening of said tee connector, said cylinder forming an upper chamber, said upper chamber having a lower portion disposed below an upper portion of said lower chamber and above a lower portion of said lower chamber;

said lower portion of said upper chamber having a bottom surface with a plurality of openings passing therethrough and having a side surface with a plurality of openings passing therethrough; and

said lower portion of said lower chamber being unobstructed over substantially its entire length.

17. (original) The apparatus of claim 16, further comprising:

a first reducer bushing operably connected to an upstream opening of said tee connector;
and

a second reducer bushing operably connected to a downstream opening of said tee connector.

18. (original) The apparatus of claim 17, further comprising:

a first powered valve operably connected to said first reducer bushing; and
a second powered valve operably connected to said second reducer bushing.

Claims 19 and 20 (canceled)

21 (new) An apparatus, comprising:

a dispenser having a lower chamber, an upper chamber, an upstream opening, and a downstream opening, a lower portion of said upper chamber being disposed below an upper portion of said lower chamber and above a lower portion of said lower chamber, said lower portion of said lower chamber being unobstructed over substantially its entire length;

a first electrically powered valve operably connected to said upstream opening; and
a second electrically powered valve operably connected to said downstream opening.

REMARKS

Reconsideration of the above-identified application is respectfully requested in light of the above amendments and following remarks. It is respectfully requested that the above amendments be entered as they place the application in condition for allowance or in better condition for appeal.

Claims 1-10 and 16-18 are in the application. Claims 16-18 stand allowed, claims 1-6, 8 and 9 stand rejected, and claims 7 and 10 stand objected to. The present amendment seeks to delete claims 1-10 and to add new independent claim 21 that corresponds with dependent claim 7.

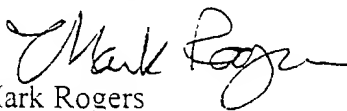
Claims 1-6, 8, and 9 have been deleted, so the rejection of claims 1-6, 8 and 9 is moot. It is understood that these claims are being deleted solely for the purpose of expediting prosecution of the present application and issuance of a patent. The deletion of these claims should not be deemed as an admission that the rejection is proper and is without prejudice or waiver. Applicant reserves the right to reassert these and other claims in related, later filed applications.

Paragraph 7 of the final Office action indicates that claim 7 is objected to as being dependent upon a rejected base claim but that claim 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, dependent claim 7 has been deleted and rewritten in independent form as new claim 21 which includes all of the limitations of the base claim and all intervening claims. It is therefore submitted that new claim 21 distinguishes over and is patentable over the references of record. It is understood that claim 7 is being deleted and rewritten in independent form as claim 21 solely for the purpose of expediting prosecution of the present application and issuance of a patent. This should not be deemed as an admission that the rejection is proper and is without prejudice or waiver. Applicant reserves the right to reassert these and other claims in related, later filed applications.

It is therefore respectfully submitted that claims 16-18 and 21 distinguish over and are patentable over the references of record. Formal notice thereof is respectfully requested. If the Examiner deems that anything else is required to place the application in condition for allowance, the Examiner is invited to contact the undersigned at the numbers given below.

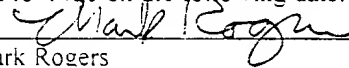
Respectfully submitted.

Date: 6-4-04

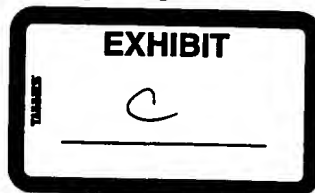

Mark Rogers
Registration No. 34, 238

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the following date: 6-4-04


Mark Rogers
Speed & Rogers, P.A.
1701 Centerview, Suite 125
Little Rock, Arkansas 72211
Telephone: 501.219.2800
Facsimile: 501.219.2879
Email: mr Rogers@speedlaw.com

1. (currently amended) An apparatus, comprising:
 - a dispenser having a lower chamber, an upper chamber, an upstream opening, and a downstream opening;
 - a first electrically powered valve operably connected to said upstream opening; and
 - a second electrically powered valve operably connected to said downstream opening.
2. (currently amended) The apparatus of claim 1, further comprising:
 - a first water line secured to an upstream side of said first electrically powered valve; and
 - a second water line secured to a downstream side of said second electrically powered valve.
3. (currently amended) The apparatus of claim 1 wherein:
 - said first electrically powered valve has a first conductor for supplying electricity to said first electrically powered valve; and
 - said second electrically powered valve has a second conductor for supplying electricity to said second electrically powered valve, said first conductor being in electrical contact with said second conductor.
4. (currently amended) The apparatus of claim 1 wherein said first and second electrically powered valves comprise electrical solenoid valves.
5. (original) The apparatus of claim 1 wherein a lower portion of said upper chamber is disposed below an upper portion of said lower chamber.
6. (original) The apparatus of claim 5 wherein said lower portion of said upper chamber is disposed above a lower portion of said lower chamber.
7. (original) The apparatus of claim 6 wherein said lower portion of said lower chamber is unobstructed over substantially its entire length.
8. (original) The apparatus of claim 5 wherein said dispenser comprises a tee connector and a cylinder secured to an upper opening of said tee connector.



Advisory Action

Application No.

09/761,940

Applicant(s)

THORNTON, BRIAN

Examiner

Robin O. Evans

Art Unit

3742

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 16-18.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement. (9) Paper No(s): _____.

10. ☐ Other: _____



Robin O. Evans
ROBIN O. EVANS
PRIMARY EXAMINER

7/22/04

Continuation of 2. NOTE: Newly presented claim has not been presented previously and would require additional consideration..